

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DR. HANSEL M. DeBARTOLO)	
)	
Plaintiff,)	Case No. 07 C 7179
)	
v.)	JUDGE ZAGEL
)	MAGISTRATE JUDGE KEYS
SUBURBAN TEAMSTERS OF NORTHERN)	
ILLINOIS WELFARE FUND,)	
)	
Defendant.)	

**DEFENDANT’S MOTION TO WITHDRAW MOTION TO DISMISS
AND MOTION FOR MORE DEFINITE STATEMENT**

Defendant, SUBURBAN TEAMSTERS OF NORTHERN ILLINOIS WELFARE FUND, (hereinafter “Welfare Fund”), by and through its attorneys, Librado Arreola and Barry Collins of Asher, Gittler, Greenfield & D’Alba, Ltd., pursuant to FRCP 12(e), moves this Honorable Court to allow Defendant Welfare Fund to withdraw its Motion to Dismiss without prejudice and moves this Honorable Court to direct Plaintiff to amend its Complaint and provide for a more definite statement. In support of this Motion, Plaintiff states:

1. Defendant Welfare Fund filed its Motion to Dismiss based on the inconsistency in Plaintiff’s Complaint between Defendant’s name and the name of the entity (“Teamsters Local No. 142”) identified on the assignment of benefits attached to Plaintiff’s Complaint.

2. Plaintiff, in its Response to the Motion to Dismiss and in its supporting Memorandum of Law, has raised various issues of fact, among them, the allegation that, “The plan participant [Jimmy Null] was employed by Suburban Teamsters Local 142,” and the allegation that “Defendant and Teamsters Local 142 are the same entity.” However, neither of

these factual allegations are contained within the Complaint and are therefore unsupported assertions.

3. More to the point, Plaintiff argues that the validity of an assignment of benefits is based on the intent of the parties. Ascertaining the intent of the parties is an issue of fact. Defendant Welfare Fund concedes that the validity of the assignment is an issue of fact. At the same time, Defendant Welfare Fund submits that the factual issues in this case (or at least those issues that are relevant at this stage of the litigation) result from Plaintiff's failure to plead its case with sufficient specificity.

4. Plaintiff's Complaint also states that Jimmy Null incurred medical expenses from Plaintiff totaling \$8,503.99, but Plaintiff has failed to specifically identify the date those services were rendered and what services were rendered. The date is central to Plaintiff's claim because this lawsuit may be barred by the limitations period.

WHEREFORE, the Welfare Fund hereby moves to withdraw its Motion to Dismiss and instead moves to compel Plaintiff to issue a more definite statement in support of his cause of action.

Respectfully submitted,

Defendant SUBURBAN TEAMSTERS OF
NORTHERN ILLINOIS WELFARE FUND,

/s/ Librado Arreola
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